

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JULIE BALLOU, Plaintiff,

v.

VANCOUVER POLICE OFFICERS'
GUILD, Defendant.

Case No. C09-05086-RBL

**ORDER GRANTING JUDGMENT ON
PLEADINGS AND REMANDING
ACTION TO STATE COURT FOR
FURTHER PROCEEDINGS**

This matter is before the court on the Defendant's Motion For Judgment on the Pleadings, [Dkt. #10] and the Plaintiff's Motion For Leave To File First Amended Complaint. [Dkt. #14]. For the reasons below, Defendant's Motion For Judgment on the Pleadings is GRANTED, and Plaintiff's NLRA claim is dismissed. The case, including Plaintiff's pending Motion to For Leave is REMANDED to the Clark County Superior Court.

FACTS & PROCEDURE

Plaintiff Julie Ballou filed a complaint against the Vancouver Police Officers' Guild in Clark County Superior Court on January 15, 2009, for breach of duty of fair representation under the Federal National Labor Relations Act ("NLRA"). *See* 29 U.S.C. §§ 151-169 (2009); [Complaint, Dkt. #1 at 3]. Defendant removed the case under 28 U.S.C. §1446. [*See* Notice of Removal, Dkt. #1]. This Court has subject matter jurisdiction under 28 U.S.C. §1331.

1 On June 4, 2009, Defendant filed for a Motion for Judgment on the Pleadings. [Dkt. # 10].
2 Defendant contends that Plaintiff has no claim under NLRA because Defendant works in the public
3 sector, and NLRA only governs the private sector. Plaintiff's counsel does not contest this. In
4 conjunction with its response to the Defendant's Motion, Plaintiff filed a Motion for Leave to file an
5 amended complaint. [See Dkt. #14; Dkt. #18.] Plaintiff seeks to replace her Federal NLRA Claim with a
6 state law claim under Washington's Public Employees' Collective Bargaining Act ("PECBA"), RCW
7 41.56, and she also seeks to add claims for relief for sex discrimination and retaliation under the
8 Washington Law Against Discrimination ("WLAD"), RCW 49.60.210(1)(2009). [Dkt. #14].

10 DISCUSSION

11 **I. The NLRA Does Not Govern Collective Bargaining Agreements with State Public Employers.**

12 Ms. Ballou concedes she does not have a claim under NLRA. While federal law generally
13 preempts the field of labor law, it does not govern over collective bargaining agreements with state public
14 employers or municipal employers. See 29 U.S.C. § 152(2)(2009); *Davenport v. Wash. Educ. Ass'n*, 551
15 U.S. 177, 177 (2007); *Navlet v. Port of Seattle*, 164 Wash.2d 818, 829 (2008) ("The National Labor
16 Relations Act [NLRA] leaves States free to regulate their labor relationships with their public
17 employees."). The Vancouver Police Guild is a union that primarily represents police officers in
18 negotiations with the municipality. Ms. Ballou is police officer with the Vancouver Police Department,
19 and a member of the Vancouver Police Guild. [Dkt. #1 at 3].

20 In Washington State, the Public Employees' Collective Bargaining Act (PECBA), RCW § 41.56,
21 governs collective bargaining agreements with state public employers. See *Peninsula Sch. Dist. No. 401 v.*
22 *Pub. Sch. Employees*, 130 Wash.2d 401, 407 (1996). Plaintiff has no valid claim under NLRA.
23 Defendant's Motion for Judgment on the Pleadings is GRANTED, and that claim is dismissed.

25 **II. Outright Dismissal Of This Case Would Be Unfairly Prejudicial.**

26 Defendant argues that this action should be dismissed outright, while Plaintiff contends the Court
27 should either hear the case or to remand the action to State Court. 28 U.S.C. §1367 provides that courts may
28 exercise supplemental jurisdiction over "all other claims that are so related to claims in the action within such

1 original jurisdiction that they form part of the same case or controversy . . .” The Court DECLINES to
2 exercise supplemental jurisdiction over Plaintiff’s proposed state law claims.

3 Plaintiff originally filed this case in state court, and Defendant removed it here. [Dkt. #1]. PECBA,
4 the claim Plaintiff seeks to allege, is “substantially similar” to NLRA, and both acts provide a six-month
5 limitation period for claims based upon “any unfair labor practice.” 29 U.S.C. §§ 151-169 (1976); RCW §
6 41.56.160(1)(2009); *State ex rel. Wash. Fed’n of State Employees v. Board of Trustees*, 93 Wash.2d 60, 67-68
7 (1980). If the case were dismissed now, there may be a statute of limitations problem.¹ “A remand generally
8 will be preferable to a dismissal when the statute of limitations on the plaintiff’s state-law claims has expired
9 before the federal court has determined that it should relinquish jurisdiction over the case.” *Carnegie-Mellon*
10 *Univ. v. Cohill*, 484 U.S. 343, 352 (1988).

11 Furthermore, the Federal Rules of Civil Procedure support the policy that cases should be decided on
12 their merits, not on procedural technicalities:

13 It is [e]ntirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits
14 to be avoided on the basis of such mere technicalities. ‘The Federal Rules reject the approach that
15 pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and
16 accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.’
Conley v. Gibson, 355 U.S. 41, 48, 78 S.Ct. 99, 103, 2 L.Ed.2d 80. The Rules themselves provide
that they are to be construed ‘to secure the just, speedy, and inexpensive determination of every
action.’ Rule 1.

17 *Foman v. Davis*, 371 U.S. 178, 181-182 (1962). Dismissal would be inappropriate in this case as it would
18 unfairly prejudice the Plaintiff. The case, including pending Motion For Leave to Amend [Dkt. #14] is
19 REMANDED.

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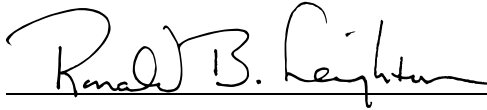
27 ¹ The Court recognizes that Plaintiff’s attorney erred in alleging a claim under the federal law instead
28 of the state law. It would be unjust to deprive Ms. Ballou of the opportunity to litigate her Breach of Duty
of Fair Representation claim because the statute of limitations had passed due to an attorney error or
procedural technicality, particularly where the case was originally filed in the (proper) state court.

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CONCLUSION

It is hereby ORDERED that Defendant's Motion For Judgment on the Pleadings as to the NLRA claim is GRANTED. Plaintiff's claim under the NLRA is DISMISSED. The case, including the pending Motion For Leave to File an Amended Complaint is REMANDED to state court.

DATED this 2nd day of July, 2009.

A handwritten signature in dark ink, reading "Ronald B. Leighton", is written over a horizontal line.

RONALD B. LEIGHTON

UNITED STATES DISTRICT JUDGE